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Governor

**KIM GUADAGNO**  
Lt. Governor

## New Jersey Office of the Attorney General

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Bureau of Securities  
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\_\_\_\_\_, 2012

### Bureau of Securities Written Examination of Investment Advisers

**Organization CRD/IARD/IARD:** \_\_\_\_\_

**IA Firm Name:** \_\_\_\_\_

**POB Address:** \_\_\_\_\_  
\_\_\_\_\_

The New Jersey Bureau of Securities (“Bureau”) maintains an ongoing effort to enforce the Uniform Securities Law. The Bureau has an Investment Advisory program that consists of both a registration and examination component. Both of these components are integral to the integrity of the investment advisory industry and for the protection of investors. The Bureau’s Investment Advisory Examination component includes an annual written examination, which investment advisory firms are required to complete and return to the Bureau. Although the Bureau has the right to conduct on-site examinations of investment advisers without notice (N.J.A.C. 13:47A-14.14), the Bureau hopes that this written examination may alleviate the need to conduct on-site examinations. This written examination in no way guarantees that the Bureau will not contact you with additional questions or conduct an on-site examination of your firm.

### Instructions

The Bureau requires investment advisers to provide the information and materials requested and to answer the questions set forth below as part of its annual examination. To the extent practicable, submit your completed questionnaire and all related documents electronically by email to: [NJBOSIAannualexam@dca.lps.state.nj.us](mailto:NJBOSIAannualexam@dca.lps.state.nj.us). Any such materials that you are unable to submit electronically may be sent in hard copy to the Bureau by overnight or certified mail. Be sure to indicate on any attachments your CRD/IARD number and the item in this questionnaire to which such additional document(s) is (are) responsive.

**Your written responses must be completed and returned to the Bureau by March 21, 2012.** Your written examination will not be deemed filed until all relevant attachments have been received. Failure to submit the completed examination and all relevant attachments by March 21, 2012 will constitute a failure to cooperate pursuant to N.J.A.C. 13:47A-14.16 and may subject you to a regulatory action.

### **A. General Questions and Documents Required**

Your responses to the questions below should include an explanation of any changes that have occurred to your responses and relevant documents previously provided to the Bureau. **It is not necessary to resubmit responsive documents that are identical to those you have submitted previously.** Identifying the changes in your responsive documents will facilitate review of your

responsive documents. Identification of the changes should be done by highlighting, redlining or specifically listing the changes. You are responsible for insuring that the responsive documents comply with the New Jersey Uniform Securities Law and rules promulgated thereunder. Provide:

1. Sample investment advisory contract(s) entered into with clients, including any variations. Include any current fee schedule(s) not otherwise stated in such contracts. Changes (see attached)\_\_\_ No changes\_\_\_
2. A sample of any business card, letterhead, brochure (for each type of advisory service that you provide, if more than one, including wrap fee program services), circular, form letter, advertisement or other sales literature or advertising communication, addressed or intended for distribution to clients or prospective clients including solicitor or referrer material.  
Changes (see attached)\_\_\_ No changes\_\_\_
3. Copies of firm or specific customer performance figures or charts used in advertising, forms or formats routinely used in one-on-one presentations or in reports to any individual or groups/categories of clients.  
Changes (see attached)\_\_\_ No changes\_\_\_
4. Attach a list of any professional designations you use on your web sites, sales literature, flyers, letterhead or business cards. See attached\_\_\_ None\_\_\_
5. Attach a description of the types or categories of clients (and the percentage of your total assets under management for each) to whom you generally provide services, including but limited to individuals, individuals age 65 or older, trusts, investment companies, pension plans, pooled investments. Indicate any related requirements for each type or category, such as minimum initial and/or ongoing account size.
6. A sample of any investor questionnaires and/or suitability analyses that your firm uses to discern new or continuing clients' investment experience, time horizon, liquidity needs, risk tolerance, financial needs, tax status and/or investment objectives. Indicate when, including how often, new or continuing clients are asked to complete such questionnaires or analyses. None\_\_\_ See attached\_\_\_
7. Does the firm have a written code of ethics, conflicts of interest policy, insider trading policies or procedures? Yes\_\_\_No\_\_\_. If yes, provide a copy.
8. Does the firm have any written policies and procedures manual(s)? Yes\_\_\_No\_\_\_. If yes, provide the table(s) of contents.
9. Provide written policies and procedures on how your firm protects and safeguards client personal information. None\_\_\_ See attached\_\_\_
10. Do you advertise on the Internet? Yes\_\_\_No\_\_\_. If yes, attach a list of each web address through which you advertise (include any social media sites).
11. Provide or describe your policies and procedures for use of any social media by your firm and any of its representatives, such as LinkedIn, Twitter, FaceBook or similar

platforms. Provide your instructions about representatives and personnel use or access to make postings on such platforms, including a description of who may post or communicate on such sites, and under what circumstances or conditions, and any prior approvals you require or subsequent reviews you make. None\_\_ See attached\_\_

12. Attach an organizational chart for your firm, including owners, control persons, officers, directors and other personnel considered to be key persons or who have any significant supervisory functions.
13. Explain any changes in personnel, positions or functions identified in response to item 12 above that occurred since December 31, 2010, and the reason(s) for such change(s). Changes (see attached)\_\_ No changes\_\_
14. Please identify your firm's chief compliance officer (CCO), if your firm has one. Indicate his/her location (if different from your firm's primary place of business), whether he/she is a compliance officer for any unaffiliated firm and, if so, the number and names of such firms. See attached\_\_ No CCO\_\_
15. Attach a certified balance sheet (audited if you have custody of client assets) for the firm dated within 60 days of this questionnaire. The Bureau will accept a balance sheet accompanied by a notarized certification from an authorized person attesting to the accuracy of the information contained in such statement if your firm does not have custody of client funds. (An example of such a certification is attached as **Explanatory Supplement to Question A.15**)

#### **B. Investment Adviser Firm Information**

1. Does the advisory firm, directly or through a related person, maintain custody and possession, or have the authority to take possession, of its clients assets in addition to or exclusive of an unrelated custodian other than for purposes of withdrawing your advisory fees when earned and due? Yes\_\_ No\_\_. If yes, attach details.
2. Has the advisory firm (since December 31, 2010) received any client complaints? Yes\_\_ No\_\_. Is the advisory firm aware of any potential claims or complaints, or involved in any current, pending or potential litigation or arbitration, affecting or related to the firm or any of its representatives? Yes\_\_ No\_\_. If yes to either, attach details.
3. Is the firm the subject of any pending, potential or anticipated regulatory inquiries? Yes\_\_ No\_\_. If yes, attach details.
4. Does the adviser use the services of third-party solicitors? Yes\_\_ No\_\_. If yes, attach in a list the names, CRD/IARD number(s) and copies of any solicitor agreements.
5. Does the advisory firm use a "doing business as" (DBA) name other than the one recorded with the New Jersey Bureau of Securities? Yes\_\_ No\_\_. If yes, attach an explanation and copies of items, i.e., business cards, letterhead and CRD/IARD number on which the DBA is used.

6. List any other business activities or joint ventures conducted on your premises, such as office sharing, accounting, tax services, mortgage-related services, insurance, real estate, pension or retirement plan administration, other business advisory or consulting services, etc. None\_\_ See attached\_\_
7. List any other broker-dealer and/or investment adviser firms which your firm controls or is under common control with, or is otherwise affiliated. None\_\_ See attached\_\_
8. Is your advisory firm associated, or does it have business arrangements, with a broker-dealer? Yes\_\_ No\_\_. If yes, when was the last time you were examined by the compliance department of that firm? Date:\_\_\_\_\_ (\*\*/\*\*/\*\*\*\*)  
Attach a summary of findings.
9. Does your advisory firm conduct seminars? Yes\_\_\_\_ No\_\_\_\_. If yes, attach details.
10. What are the average gains/losses that you have achieved for your clients for each of the last three calendar years 2011\_\_\_\_%, 2010 \_\_\_\_% and 2009 \_\_\_\_%? Attach an explanation of your methodology for calculating such results.
11. Does the firm or any of its representatives charge a performance fee defined under Bureau Regulation 13:47A-2.10 (see Bureau attachment, **Explanatory Supplement to Question B.11**)? Yes\_\_ No\_\_. Attach a description or schedule if not stated in the sample advisory contract(s) you've provided.
12. Do you recommend, or make investments for your discretionary accounts in, any of the following types of products (check any/all that apply):  
\_\_ Microcap Stocks (i.e., "Penny" Stocks)  
\_\_ Natural Resources, Alternative Energy Technologies or Precious Metals  
\_\_ Life Insurance (e.g., Viatical) Settlements  
\_\_ Gold Bullion or Foreign Currencies  
\_\_ Privately Placed and/or Unregistered Securities (including those for which no secondary market exists or that are restricted from being resold)  
\_\_ Entertainment Investments (including films, theater productions, infomercials, web-based entertainment providers)  
\_\_ Non-publicly traded real estate products (including private REITs, mortgage-related financial products such as reverse mortgages, or distressed real estate ventures)  
\_\_ Asset-Backed Securities (including collateralized Mortgage Obligations) and/or Insured or Guaranteed Promissory Notes  
\_\_ Church Bonds  
\_\_ Leveraged, Inverted, and/or Volatility Exchange Traded Funds (ETFs)  
\_\_ Derivative or Market-Linked Certificates of Deposit
13. Does your firm recommend the use of self-directed IRAs by any of its clients? Yes\_\_\_\_ No\_\_\_\_. If yes, attach a list of the firms you recommend that your clients use as their custodian or trustee for such IRAs, and explain any relationship you or any of your personnel may have with any such firm.

14. Indicate the approximate amount of total assets the firm has under management (AUM):  
☐ \$25 million or less  
☐ More than \$25 million but not more than \$50 million  
☐ More than \$50 million but not more than \$75 million  
☐ More than \$75 million
15. Indicate the approximate dollar amount of the change (decrease or increase) in your firms AUM since December 31, 2010 \$ \_\_\_\_\_  
 December 31, 2009 \$ \_\_\_\_\_  
 December 31, 2008 \$ \_\_\_\_\_
16. Indicate the number of clients for whom you provide investment advisory services (for purposes of this calculation, you may count all accounts in a related group, such as an individual account and a related IRA, as one client):  
 Total \_\_\_\_\_  
 New Jersey primary residence or principle place of business:  
 Discretionary \_\_\_\_\_ Non-Discretionary \_\_\_\_\_
17. Does your firm use computer encryption software to protect from theft?  
 Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, attach a description.

### **C. IA Representatives**

1. The Bureau registers investment advisory representatives through the IARD system using Form U-4. Attach a list of the name(s) and CRD/IARD number(s) for all IA reps, solicitors and referrers associated with or in any way doing business with your firm.
2. Identify and explain any known dual affiliations or registrations as a BD agent or IA representative that any of your IA representatives, solicitors or referrers listed in response to C.1 above has with any other broker-dealer or investment adviser.  
 None\_\_ See attached\_\_
3. Are any such IA representatives, solicitors or referrers involved in wrap and/or referral accounts with a broker dealer firm? Yes\_\_ No \_\_. If yes, attach a list of the names of the broker dealer firms, disclosure documents provided to clients and compensation arrangements.
4. Do any such IA representatives have their own "doing business as" (DBA) name, which is different from the IA firm's name? Yes\_\_ No \_\_\_\_ If yes, Attach a list of all such persons and such DBAs.
5. Describe any complaints, whether formal or informal, that relate, either directly or indirectly, to any of your IA representatives. Include any pending or potential customer complaints or claims, regulatory inquiries and/or litigation.  
 None\_\_ See attached\_\_

6. List all other (non-registered) personnel on the premises and their job functions.  
None\_\_ See attached\_\_

### **Changes In Information**

You must provide to the Bureau any informational changes such as new direct or indirect owners, address or telephone number if not reflected on the IARD. If you maintain a branch office(s), provide all addresses. In addition, you are responsible to update Form ADV and any information on the IARD system including Forms U-4 for all IA representatives.

None\_\_ See attached\_\_

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**NOTE:** If the person executing this written examination response is not the contact person listed on the IARD for your firm, please be sure to explain their title or other relationship authorizing them to do so, and update the information in your Form ADV promptly if needed.

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### **Execution**

Under penalties of law, I affirm by my signature or electronic submission that this information contained herein, and attached hereto, is true, complete, and current, and that I am an authorized person to submit it.

**Signature**\_\_\_\_\_ **Date**\_\_\_\_\_

**Name**\_\_\_\_\_

**Title**\_\_\_\_\_

If you have any questions about or arising from this written examination, please contact a member of the Examinations staff by emailing your inquiry to [NJBOSIAannualexam@dca.lps.state.nj.us](mailto:NJBOSIAannualexam@dca.lps.state.nj.us) or if necessary by calling (973) 504-3668. Do not request confirmation of receipt of your submission or its status.

**Explanatory Supplement to Question A.15**

**Acceptable Balance Sheet Certification Form**

State Of New Jersey  
Investment Adviser Application  
Certification

The undersigned \_\_\_\_\_,  
being the individual applicant or an officer, director, general partner of the applicant corporation or partnership, of full age, deposes and says that: (1) he has read and understands the provisions of section 49:3-54 of the Uniform Securities Law (1997); (2) he has read all of the statements contained on this form and they are true and correct; and (3) he understands that any false or misleading statement constitutes a violation of the Uniform Securities Law (1997). (L. 1997, C. 276)

I certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

## **Explanatory Supplement to Question B.11**

### **Bureau Regulation**

#### **13:47A-2.10 Performance fee compensation**

(a) The provisions of N.J.S.A. 49:3-53(b)(I) shall not prohibit any investment adviser registered as an investment adviser pursuant to N.J.S.A. 49:3-56(a) from entering into, performing, renewing or extending an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the conditions of this section are met and all conditions of Rule 205-3 (17 CFR 275.205-3) under the Investment Advisers Act of 1940, 15 U.S.C. §§80b-1 et seq., which are not in conflict with the conditions set forth in this section are satisfied.

(b) The client entering into the contract subject to this regulation must be a natural person or a company as defined in Rule 205-3, who the registered investment adviser (and any person acting on the investment adviser's behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company as defined in Rule 205-3, whose net worth at the time the contract is entered into exceed \$1,500,000. The net worth of a natural person shall be as defined by Rule 205-3 of the Investment Advisers Act of 1940.

(c) Nothing in this section shall prevent the renegotiation, for the purposes of changing the method of compensation in compliance with this section, of an investment advisory contract between a registered investment adviser and the client of such investment adviser provided both parties agree to the new or additional terms.

(d) Nothing in this section relieves a client's representative from any of the obligations under N.J.S.A. 49:3-47 et seq. including, but not limited to, the obligation to register with the Bureau pursuant to N.J.S.A. 49:3-56(a) and the obligation to comply with N.J.S.A. 49:3-52 and 49:3-53.

(e) For purposes of this section, a business development company, as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. § 80a-2(a)(48)), shall not be prohibited by N.J.S.A. 49:3-53(b)(1) or by this section from paying or receiving performance based fee compensation, provided the business development company is allowed to pay or receive performance based fee compensation pursuant to Federal law and SEC regulations.